

### **REMARKS/ARGUMENTS**

The Applicants respectfully request reconsideration of the present Application in view of the foregoing amendments and the following remarks/arguments. Claims 1-25 were originally filed in the present Application. By Preliminary Amendment, claims 2, 4, 5, 9, 19 and 20 were canceled, without prejudice or disclaimer, claims 26-48 were added, and claims 1, 3, 6-8, 10-18 and 23-25 were amended. By prior Amendment, Applicants amended claims 1, 3 and 8, canceled claim 10, and withdrew claims 6, 12, 14-18 and 21-48 in response to the Examiner's Restriction Requirement. By another previous Amendment, the Applicants amended claims 1, 7, 8, 11 and 13, and added new claim 49.

By the present Amendment, the Applicants have amended claims 1, 7, 11 and 49, canceled claim 3, and have withdrawn claims 6, 8 and 13 pending the allowance of a generic independent claim on which these claims may depend. Also, the Applicants have added new claims 50-64. In addition, the Applicants have canceled claims 18, 21-24 and 26-28, comprising Group II and being drawn to a non-elected method, as well as claims 25 and 35-48, comprising Group III and being drawn to a non-elected railing/fencing kit and method of assembling thereof. Accordingly, claims 1, 7, 11 and 49-64 are pending in the present Application. No new matter has been added.

#### **I. INTERVIEW SUMMARY**

An in-person interview between the Examiner and Applicants Attorneys of Record, John Flaim and Brian McCormack, took place on February 2, 2006, at the United States Patent and Trademark Office. A sample product and proposed Amendment was presented to the Examiner during the Interview. Upon discussion of pending independent claim 1 in view of U.S. Patent No. 5,164,538 to McClain III, it was agreed that the Applicants would present an amended claim

1 that includes an aperture since McClain does not disclose an aperture. In view of the above comments, the Applicants concur with the substance of the Examiner's Interview Summary mailed following the interview.

## **II. OBJECTIONS AND FORMAL MATTERS**

The Examiner has reasserted the objections on various grounds to the drawings because the replacement drawings referred to in the Applicants' prior Amendment were not filed with that Amendment. The Applicants apologize for this inadvertent oversight, and are submitting these replacement drawings with the present Amendment. The Applicants specifically addressed each of the Examiner's objections in the prior Amendment, and those grounds of overcoming these objections in view of the replacement drawings are hereby reasserted. Thus, the Applicants request that the Examiner withdraw these grounds of objection in view of these replacement drawings.

The Examiner has also objected to Figure 2 for having Line 1-1 illustrated therein on the grounds that Figure 1 is not a cross-sectional view of Figure 2. The Applicants have removed this feature of Figure 2 in the accompanying replacement drawings, and thank the Examiner for bringing this inadvertent error to the Applicants' attention.

The Examiner has also objected to the specification for including reference characters 212A, 212B, 214A and 214B, as well as that these reference characters define portions of the plug fastener, as opposed to various surfaces of a fastener. The use of these reference characters is proper when considered in view of the replacement drawings submitted herewith. In addition, while the Applicants may not necessarily agree with the Examiner that these characters are improperly identifying different "surfaces" of a fastener (in view of the species limitation), in order to advance the prosecution of the present Application, the Applicants have amended the

claims to recite “portions” of a surface, rather than various “surfaces” in accordance with the Examiner’s suggestion. For these reasons, this objection should also now be withdrawn.

The Examiner has next objected to claims 7 and 49 for each including an erroneous word. With regard to claim 7, the Applicants have deleted the word “and” from claim 7 in accordance with the Examiner’s suggestion. With regard to claim 49, the Applicants have deleted the word “deformable” from this claim, which therefore renders moot the objection. In view of these amendments, the Applicants respectfully request that these objections also be withdrawn.

### **III. REJECTIONS UNDER 35 U.S.C. §112**

The Examiner has rejected independent claim 1 under 35 U.S.C. §112, second paragraph, as allegedly failing to particularly point out and distinctly claim the subject matter which the Applicants regard as the invention. Specifically, the Examiner states that recitation of various “surfaces” in claim 1, and thus its dependent claims, is improper in view of the earlier restriction to the ball-type species within the present application. While the Applicants may not necessarily agree with the Examiner that such recitations are improper, in order to advance the prosecution of the present Application, the Applicants have amended the claims to recite first and second “portions” rather than “surfaces” in accordance with the Examiner’s suggestion. In view of these amendments, the Applicants respectfully request that the Examiner withdraw these objections.

Next, the Examiner has rejected dependent claims 8 and 13 as reciting embodiments that are not spheroidal, in view of the earlier election to prosecute Species VI at this time. In response, the Applicants have temporarily withdrawn claims 8 and 13 from consideration at this, and will reintroduce these claims once a generic independent claim has been allowed on which these claims may depend. Thus, the Applicants request that this objection also be withdrawn.

#### **IV. REJECTIONS UNDER 35 U.S.C. §101**

The Examiner has provisionally rejected claims 8 and 13 on the grounds that should one of these claims be allowed, the other would be rejected for statutory double patenting. While the Applicants do not agree with the Examiner's assessment of the subject matter of these two claims (claim 8 recites variations of the "first engaging surface" while claim 13 recites variations of the "mating surface", which is defined as a different surface of the fastener), the withdrawal of these dependent claims has rendered this provisional rejection moot.

#### **V. REJECTIONS UNDER 35 U.S.C. §102**

The Examiner has rejected claims 1, 3, 7, 8, 11, 13 and 49 under 35 U.S.C. §102(b) as allegedly anticipated by U.S. Patent No. 5,164,538 to McClain III. The Applicants have amended claim 1 to recite that the plug fastener comprises an aperture extending through the plug fastener, where the first and second ridges are concentric with respect to the aperture. In view of this amendment, McClain does not disclose all of the elements of independent claim 1, as amended, and its dependent claims. As such, the Applicants respectfully request that the Examiner withdraw the §102(b) rejection with respect to the presently pending claims.

#### **VI. CONCLUSION**

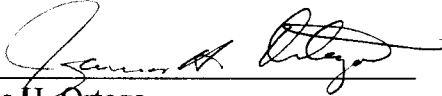
The Applicants respectfully submit that pending claims 1, 7, 11 and 49-64 are in condition for allowance, and request a Notice of Allowability for the pending claims. Moreover, the Applicants further assert that independent claim 1 is a generic independent claim, and thus respectfully request that the Examiner remove the species-based restrictions to those embodiments in the present Application covered by independent claim 1. The Examiner is invited to contact the undersigned Attorney of Record if such would expedite the prosecution of the present Application. The Applicants note that the present Amendment is being filed within

three months of the mailing date of the non-final Office Action dated December 20, 2005.

Moreover, although claims 50-64 have been added, enough claims have been canceled such that additional claims fees are not required. Thus, although no fees are believed due with the present Amendment, if it is determined that fees are due, please charge Deposit Account No. 13-0480, referencing the Attorney Docket Number specified herein.

Respectfully submitted,

Date: March 20, 2006



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